

# Tennessee Attorney General's Office



- Jared D. Plunk, Assistant Attorney General
- Tennessee Attorney General's Office, Consumer Protection Division
- On Facebook: [facebook.com/tennesseeconsumerhelp](https://facebook.com/tennesseeconsumerhelp)
- On Twitter: [twitter.com/tnattygen](https://twitter.com/tnattygen)





# DISCLAIMER

- The opinions expressed in this presentation are solely those of the presenters and **should not** be construed to reflect the opinion or positions of the Attorney General, the Consumer Advocate and Protection Division, the Director of Consumer Affairs, or the Division of Consumer Affairs.

The opinions expressed in this presentation are solely those of the presenters and **should not** be construed to reflect the opinion or positions of the Attorney General, the Consumer Advocate and Protection Division, the Director of Consumer Affairs, or the Division of Consumer Affairs.

# Who is the Tennessee Attorney General?



- **Attorney General Herbert H. Slatery III**



# What does the AG do?

The chief legal officer for the State. The role of the Attorney General and his staff is to help each part of state government—executive, legislative, and judicial—fulfill their respective functions.

Formal opinions of the Attorney General on legal issues are only rendered to state officials upon request.

The Attorney General is appointed to an eight-year term by the Tennessee Supreme Court.

Organizationally, the office of the Attorney General is divided into **18 divisions**.



# The Consumer Advocate and Protection Division

The Division enforces the Tennessee Consumer Protection Act which protects consumers and businesses from **unfair and deceptive trade practices**. The Consumer Protection division also enforces Tennessee's Unauthorized Practice of Law (UPL) Statute and the state and federal antitrust laws.

Through the Division, actions may be brought on behalf of the Division of Consumer Affairs and in the name of the State of Tennessee.

The Division is unable to represent individual consumers or to give legal advice.



# TCPA BASICS

The TCPA is to be **liberally construed** to protect consumers. Tenn. Code Ann. § 47-18-102.

The numerous **common law fraud defenses are** simply **not available** in a TCPA action. *Tucker v. Sierra Builders*, 180 S.W.3d 109, 115 (Tenn. Ct. App. 2005).

An act or practice can be deceptive even if there is:

- No intent to deceive
- No knowledge of the deception,<sup>2</sup> or
- No reliance

**Negligent** misrepresentations can violate the statute.<sup>4</sup>

**Privity of contract is not required** to maintain a cause of action under the TCPA.<sup>5</sup>

**Disclaimers**, sufficient for UCC purposes, **do not bar a TCPA action**.<sup>6</sup>

<sup>1</sup> *Smith v. Scott Lewis Chevrolet, Inc.*, 843 S.W.2d 9, 12-13 (Tenn. Ct. App. 1992).

<sup>2</sup> *Smith*, 843 S.W.2d at 12-13.

<sup>3</sup> *Harvey v. Ford Motor Credit Co.*, No. 03A01-9807-CV-00235, 1999 WL 486894, at \*2 (Tenn. Ct. App. July 13, 1999) (though actual damages are available under the private right of action that occurred “as a result of” the unfair or deceptive act or practice. See Tenn. Code Ann. § 47-18-109(a)(1)).

<sup>4</sup> *Smith*, 843 S.W.2d at 13.

<sup>5</sup> *Heatherly v. Merrimack Mutual Fire Ins. Co.*, 43 S.W.3d 911, 915 (Tenn. Ct. App. 2000).

<sup>6</sup> *Morris v. Mack’s Used Cars*, 824 S.W.2d 538, 539 (Tenn. 1992).



**For violations of the TCPA, a court can order penalties for each violation in the amount of up to:**

- A. \$100
- B. \$500
- C. **\$1,000**
- D. \$10,000





# How do TCPA violations get reported?

- The Consumer Division receives information about potential violations from a number of sources including consumer complaints, whistleblowers, former employees, and other law enforcement agencies.
- Consumer complaints are made to the Tennessee Division of Consumer Affairs, the Federal Trade Commission, the Consumer Financial Protection Bureau, and the Better Business Bureau.
- The Consumer Division decides how to proceed based on the information that is gathered.






# What was the top area of complaints received by the DCA in 2013?

- A. Debtor/Creditor Issues
- B. Utilities
- C. Health Service & Products
- D. Home Improvement
- E. Insurance



# Top DCA Complaint Categories 2013



• Debtor/Creditor	542
• Utilities	470
• Landlord/Tenant	325
• Insurance	303
• Timeshares	294

# The Tennessee Division of Consumer Affairs

- The Division of Consumer Affairs (DCA) is the entity of the Tennessee state government that regulates unfair and deceptive business practices by working with the Attorney General's Office.
- DCA is the central intake for all consumer complaints on businesses throughout the state. The Division acts as an intermediary in mediating complaints between consumers and the business.
- If you ever have a complaint on a business you should contact DCA.





# Tennessee Division of Consumer Affairs

- The Division of Consumer Affairs can be contacted at:
- Phone: (615) 741-4737
- Inside TN: 800-342-8385
- [www.tn.gov/consumer](http://www.tn.gov/consumer)





# Federal Trade Commission

- In addition to the Division of Consumer Affairs, the Federal Trade Commission (FTC) is a useful consumer education and complaint intake channel.
- The FTC runs statistics on the top complaints each year and informs the proper government officials to areas of concern.
- The FTC also provides up to date information and videos to consumers warning them of scams and ways to protect themselves.





# Federal Trade Commission

## 2013 Complaint Details

- Total Number of Tennessee Identity Theft, Fraud and Other Consumer Complaints = **32,631**
  - Fraud and Other Complaints Count from Tennessee Consumers = **28,163**

Rank	Top Categories	Complaints	Percentage <sup>1</sup>
1	Debt Collection	2,880	10%
2	Banks and Lenders	2,476	9%
3	Impostor Scams	2,176	8%
4	Prizes, Sweepstakes and Lotteries	1,906	7%
5	Television and Electronic Media	1,626	6%
6	Auto-Related Complaints	1,595	6%
7	Telephone and Mobile Services	1,399	5%
8	Shop-at-Home and Catalog Sales	991	4%
9	Internet Services	829	3%
10	Health Care	622	2%

- Identity Theft Complaints Count from Tennessee Victims = **4,468**



# Consumer Financial Protection Bureau

- The CFPB was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). In 2012, Rich Cordray was appointed to be the first CFPB Director.
- The CFPB carries out federal consumer financial laws.
- The CFPB also takes complaints from consumers in the areas of:
  - Credit Cards/Credit Products
  - Debt Collection
  - Banks
  - Mortgages
  - Other Lenders (Pay Day Loans, Student Loans)



Consumer Financial  
Protection Bureau





# Consumer Financial Protection Bureau

- Consumers can file complaints with the CFPB at:
  - Consumerfinance.gov or
  - (855) 411-2372





**What power does the Attorney General have to stop unfair or deceptive business practices?**





# REQUESTS FOR INFORMATION

- Under the Consumer Protection Act, the Attorney General has the authority to issue pre-litigation inquiries to companies who may have information related to unfair or deceptive business practices.
- The Attorney General also has the authority to take sworn statements prior to the filing of suit.
- If the alleged violations are of an egregious nature, more serious steps can be taken, such as...



# TEMPORARY RESTRAINING ORDERS / TEMPORARY INJUNCTION

- In serious cases, the Attorney General may ask the court to grant a temporary restraining order or temporary injunction halting a business' deceptive business practices.





# ASSET FREEZES

- The Attorney General may also ask the court to grant an asset freeze to prevent the defendants from moving any monies classified as ill-gotten gains from the deceptive or unfair practices.



# LAWSUITS

- The Consumer Division can file suit against entities who we believe to be in violation of the Tennessee Consumer Protection Act. These cases often seek relief in the form of permanent injunctions, restitution for victims, and civil penalties.





# **DO THE INVESTIGATIONS REALLY HELP TENNESSEE CONSUMERS?**







# Britlee, Rome Finance Company

- In 2005, the Attorney General's Office filed suit against Britlee and Rome Finance Company after receiving complaints from soldier at Fort Campbell about questionable sales and lending practices specifically targeting members of the military for sales and financing of electronics primarily computers.
- In late 2008, the Attorney General's Office won a \$10.8 million judgment against Rome Finance with an \$8.8 million award specially designated as soldier restitution.



# Britlee, Rome Finance Company

- In 2010, a judge granted the State's request for judgment and more than \$1 million dollars to go back to soldiers and or their families who fell victim to Britlee's deceptive tactics.
- In addition to the judgment against Britlee, an injunction was imposed that provides consumer protections prohibiting certain unlawful conduct. Britlee must now stop all collections involving any affect solider accounts, dismiss all pending collection suits and clear all affected credit bureau records for the soldiers.
- In 2014, Tennessee, the CFPB, and 12 state attorneys general announced a total of approximately \$92 million in debt relief obtained for about 17,000 soldiers and other consumers alleged to have been harmed by Colfax Capital Corporation and Culver Capital, LLC, also collectively known as "Rome Finance."





# NATIONAL MORTGAGE SETTLEMENT

**GMAC** = ally

**Bank of America**



**WELLS  
FARGO**

**citi**®

 **JPMorganChase**



# NATIONAL MORTGAGE SETTLEMENT

- Tennessee, along with 48 other Attorneys General and several federal agencies, reached an agreement with the nation's five largest servicers: Bank of America, Chase, Citi, GMAC/Ally Financial, and Wells Fargo. This national mortgage settlement provided relief to eligible homeowners such as loan modifications, refinance, forbearance, and short sales. The settlement also set out new servicing standards for the servicers to implement to improve communications with these servicers. For instance, the servicers must provide homeowners seeking loan modification assistance with a single point of contact regarding their situations.



# NATIONAL MORTGAGE SETTLEMENT

- **Single Point of Contact**

- Matt Pulle, Assistant Attorney General

- **Housing Counselors**

- Mortgage Assistance Hotline – 855-876-7283

**Attorney General Website**

[www.tn.gov/attorneygeneral](http://www.tn.gov/attorneygeneral)





# State of TN V. Blue Hippo







# BLUE HIPPO

## Predatory Lending Allegations



- Blue Hippo is a retailer who sells computers and other electronics to credit-challenged and indigent consumers.
- They do not own, store, or keep the computers and electronics they sell in inventory. Blue Hippo basically acts as a middle-man, collecting up to four and five times what the consumer could have paid by purchasing directly from Dell or Gateway.
- Under Blue Hippo's default payment option, consumers stand to receive their products a year after the order date. The State sued Blue Hippo in October, 2008, alleging, among other things that the company failed to make material disclosures about their product offer.





# BLUE HIPPO

## Predatory Lending Allegations



- Made false statements to lure low-income and credit-challenged consumers to use their financing services for electronic items while failing to disclose the exact terms of the agreements.
- Made false statements about the so-called “free” items.
- Made false statements about the exact terms of their offers, including the claim that no “credit checks” are required.
- Failed to disclose key terms of their offer to consumers.
- Ads promise "brand new brand name" desktop computers, laptops and plasma TVs. And to get the attention of their target audience, they repeatedly made it clear that there will be no credit check - that everyone is automatically approved.
- Ads offer “free” electronics as an incentive to buy immediately. Many computers and “free” electronics failed to be delivered to customers who fulfilled agreements.



# BLUE HIPPO

## Court Order



- Permanently enjoined from doing business in Tennessee
- \$2.5 M in Restitution
- Blue Hippo filed for Bankruptcy and is no longer in business

# Gary Mathews Motors

- Gary Mathews Motors, located in Antioch, allegedly violated the Tennessee Consumer Protection Act by not clearly disclosing the terms and conditions of representations and prizes offered in a "Regional Clearance Event" promotional mailer sent to Tennesseans.
- As a result of the State's investigation, Gary Mathews agreed to enter into an Assurance of Voluntary Compliance. Under the terms of the Assurance, Gary Mathews agreed to pay \$10,000 to the State and is prohibited from making such misrepresentations in the future. Gary Mathews denied wrongdoing in the settlement.



**Dear Customer,**  
During this event, Hundreds of Vehicles will be sold direct to the public. Cars, Trucks, Vans & SUVs... All at the lowest prices of the Year! All reasonable offers will be accepted. It doesn't matter... Let's talk! Hurry in today to find your vehicle!

**\$0 DOWN** <sup>(1)</sup>

**\$99 PER MO.**

Tuesday, May 14th: 9AM - 8PM - Wednesday, May 15th: 9AM - 8PM  
Thursday, May 16th: 9AM - 8PM - Friday, May 17th: 9AM - 8PM - Saturday, May 18th: 9AM - 8PM  
Sunday, May 19th: Closed - Monday, May 20th: 9AM - 8PM



# United Benefits of America

- This action was filed jointly by the State of Tennessee and the Federal Trade Commission as part of “Operation Health Care Hustle.” UBA allegedly engaged in numerous unfair and deceptive acts and practices in connection with the sale of products which are represented to be major medical health insurance but are really only memberships in various benefits associations that do not provide major medical health insurance coverage.



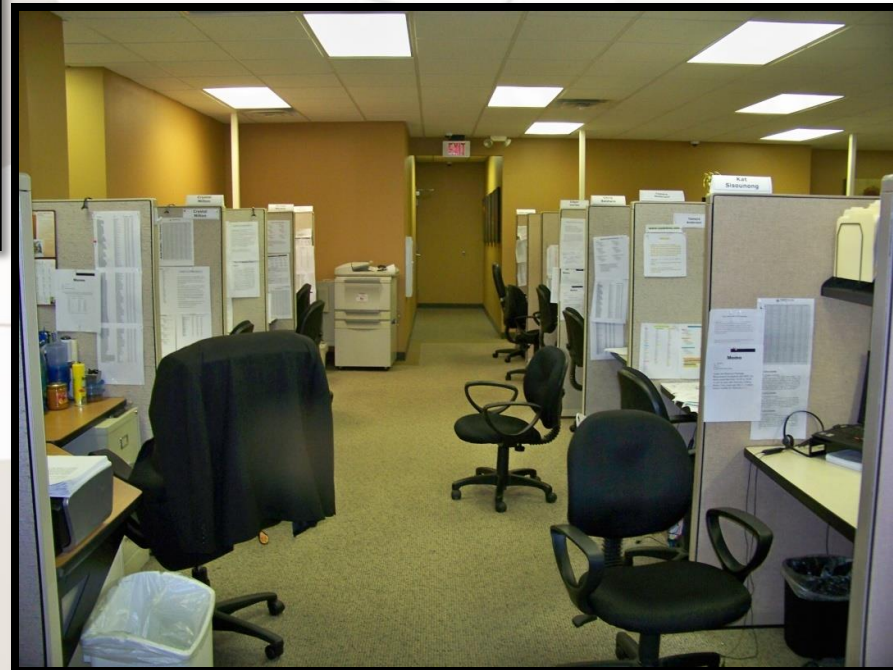
# United Benefits of America

- Often, the people targeted did not have health insurance due to a serious pre-existing condition.
- The company was misleading elderly, disabled and unemployed consumers about the product being sold.
- In addition to the deceptive business practices, UBA was violating the federal Telemarketing Sales Rule and the Do-Not-Call law.





# United Benefits of America





# United Benefits of America

## I NEED TO TALK TO MY SPOUSE

**John**, I completely understand how you feel. I had another man say the same thing this morning before he bought. I wouldn't want you to get it if your wife would be mad at you, shoot you, or make you sleep on the couch, but it's like another one of my customers Mr. Black said, "If his wife was sitting beside him, saw the product, and knew he wanted it, she'd tell him to go ahead and get it." As I mentioned, I need your address...

GLE

Press One Cold Call Campaign

Hello, this is \_\_\_\_\_ with \_\_\_\_\_. As you know  
Health Care reform is on everyone's mind and the new  
\_\_\_\_\_ 2014. That's

## I Want to Compare...

Mr. Johnson, I know how you feel. I think a lot of people feel that way before they buy from us. In fact, one man said that and then went ahead and enrolled. Here's what he said, "I guess if I apply for individual Health Insurance I'll be rejected because of my pre-existing condition." That's your situation isn't it, Mr. Johnson?

Well, if you can't get individual coverage your only alternative is to be a member of an existing group association.

Here at USB we have looked at all the group associations, and we've put together the best plan for you. You see we've done the comparison for you already Mr. Johnson.

So, we need to get you enrolled today, so you're covered as soon as possible. I am to transfer you to our Director so he can get you taken care of today. Please hold.





# United Benefits of America

- Tennessee is distributing \$300,000 in restitution due to eligible consumers following an agreement with a company. The agreement provides hundreds of eligible Tennesseans and consumers throughout the country a combined total of \$1.1 million in restitution as well as banning the parties from ever selling health benefits anywhere in the country, and from ever selling health insurance in Tennessee along with other injunctive relief.



# Knowledge is Power

- **RESEARCH** businesses and individuals
- **RECOGNIZE** the signs of scams
- **REPORT** scams





# Tennessee Division of Consumer Affairs

• The Division of Consumer Affairs can be contacted at:

- Phone: (615) 741-4737
- Inside TN: 800-342-8385
- [www.tn.gov/consumer](http://www.tn.gov/consumer)



# Check us out on Facebook and Twitter!



[www.facebook.com/tennesseeconsumerhelp](http://www.facebook.com/tennesseeconsumerhelp)

[www.twitter.com/tnattygen](http://www.twitter.com/tnattygen)

Jared Plunk

[jared.plunk@ag.tn.gov](mailto:jared.plunk@ag.tn.gov)

615-741-7663